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*Attorneys for Plaintiff,
MARIA BAHNA and the putative Class*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

MARIA BAHNA, an individual, on behalf
of herself, on behalf of all persons similarly
situated, and on behalf of all aggrieved
employees,

Plaintiff,

vs.

DIOCESE OF SAN BERNARDINO
EDUCATION AND WELFARE
CORPORATION, a California corporation;
and DOES 1 through 50 inclusive

Defendants.

Case No. CIVSB2303381

Hon. David E. Driscoll, Dept. S22

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Filed concurrently with:

- 1. Motion for Attorneys' Fees, Costs,
and Expenses**
- 2. Declaration of Maria Bahna**
- 3. Declaration of Tarus Dancy**
- 4. Declaration of Calvin A. Marshall**
- 5. [Proposed] Order Granting Final
Approval of Class Action Settlement**
- 6. [Proposed] Judgment**

Date: October 13, 2026

Time: 8:30 a.m.

Dept.: S22

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 13, 2026, at 8:30, a.m., or as soon
3 thereafter as counsel may be heard, in Department S22 of the above-captioned court,
4 located at 247 W. Third St., San Bernardino, California 92415, the Honorable David E.
5 Driscoll presiding, Plaintiff Maria Bahna (“Plaintiff”) will, and hereby does, move this
6 Court for final approval of:

- 7 1. The January 16, 2026, Stipulation of Settlement (“Settlement Agreement”),
8 attached as EXHIBIT 1 to the Declaration of Calvin A. Marshall (“Marshall
9 Decl.”);
- 10 2. Settlement payments to Participating Class Members, the Labor Workforce &
11 Development Agency (“LWDA”), and Aggrieved Employees; and
- 12 3. Costs and expenses to the settlement administrator, Apex Class Action, LLC.

13 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the
14 Memorandum of Points and Authorities in Support of Motion for Final Approval of Class
15 Action and PAGA Settlement; (3) the concurrently filed Motion for Attorneys’ Fees, Costs
16 and Expenses and Class Representative Enhancement Payment, (4) the Declaration of
17 Taurus Dancy on behalf of Apex Class Action, LLC, (5) the Declaration of Calvin A.
18 Marshall; (6) the [Proposed] Order Granting Final Approval of Class Action and PAGA
19 Settlement; (7) the [Proposed] Judgment; (8) the records, pleadings, and papers filed in this
20 action; and (9) upon other documentary and oral evidence or argument that may be
21 presented to the Court at or prior to the hearing of this Motion.

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1 As this Motion is unopposed, the Parties respectfully request relief from the page
2 limit requirement set by California Rules of Court, rule 3.1113(d). The argument in favor
3 of approval is approximately 15 pages, with the remainder of the motion being devoted to
4 background information necessary for the court's evaluation of the motion.

5 Dated: September 16, 2026

THE OZZELLO PRACTICE, PC
LAW OFFICES OF DAVID R. GREIFINGER

6
7
8 By: 

9 MARK A. OZZELLO

10 DAVID R. GREIFINGER

11 CALVIN A. MARSHALL

12 *Attorneys for Plaintiff, MARIA BAHNA,*
13 *and the putative Class*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 On May 28, 2026, this Court granted preliminary approval of the Parties' January 16,
4 2026 Stipulation of Settlement ("Settlement Agreement" or "Settlement") and approved
5 distribution of the Notice of Class Action Settlement to all Class Members. Class members
6 have been given 45 days to opt out or object to the Settlement ("Response Deadline"). As
7 of the filing of this Motion [over a month after the Notice was mailed], Plaintiff MARIA
8 BAHNA ("Plaintiff") is pleased to report that, as of the filing of this Motion: (1) only one
9 individual, or .006 percent, opted out of the Settlement Class; (2) no class member has
10 disputed their workweek calculation; (3) no Class Members have objected to the
11 Settlement; and (4) the average settlement payment will be approximately \$448.25 to each
12 participating Class Member, with the highest settlement payment being approximately
13 \$1,071.28.¹

14 Plaintiff now moves for final approval of the Settlement reached with Defendant
15 DIOCESE OF SAN BERNARDINO EDUCATION AND WELFARE CORPORATION
16 (collectively "Defendant" and with Plaintiff, the "Parties"). The principal terms of the
17 Settlement Agreement provide for the following:

- 18
- 19 • Gross Settlement Amount: The Gross Settlement Amount is \$1,200,000.00
20 [\$1,209,720.26 after application of the escalator clause] for approximately 1,584
21 Class Members. It is the total sum that Defendant has agreed to pay in exchange for
22 Plaintiff's and the Settlement Class Members' releases to fully and finally settle this
23 matter. It does not include the employer's portion of any payroll taxes owed to the
24 government authorities as a result of the settlement payments, which Defendant will
25 pay in addition to the Gross Settlement Amount. Settlement Agreement, at ¶ 3;
26 Dancy Decl. ¶ 16.
 - 27 • Escalator Clause: If the total number of work weeks in the Class periods increases by
more than 10% of 229,000, then the Gross Settlement Amount is increased
proportionately. For example, if the work weeks in the Class Period is 11% higher,
the Gross Settlement Amount shall be increased by 1%. Settlement Agreement, at ¶
3(D).
 - 28 • No Reversion: All settlement funds will be paid out, and none will revert to
Defendant. *Id.* at ¶ 3(C). Any individual Settlement Payment that remains uncashed

¹ Declaration of Tarus Dancy of Apex Class Action, LLC ["Dancy Decl."] ¶¶ 11-20.

1 or undistributed in the settlement fund after the payment of all claims, including any
2 accrued interest thereon, will be transferred to the State Controller's Office in the
3 name of the Settlement Class member under the unclaimed property laws. Settlement
4 Agreement at ¶ 4(E).

- 5 • Released Claims: The Released Claims with respect to the Settlement Class
6 Members include all claims and causes of actions alleged in the operative First
7 Amended Complaint and all claims that could have been pled based on the alleged
8 facts in the operative First Amended Complaint. *Id.* at ¶ 2.
- 9 • Settlement Class: The Settlement Class consists of "[a]ll current and former non-
10 exempt employees, as well as those who were allegedly misclassified as exempt
11 employees or independent contractors, of the DIOCESE OF SAN BERNARDINO
12 EDUCATION AND WELFARE CORPORATION from January 25, 2019, through
13 [May 28, 2026]." *Id.* at ¶ 1.
- 14 • PAGA Payment: \$40,000.00 shall be allocated as a settlement of Plaintiff's claims
15 under the Private Attorney General Act of 2004 ("PAGA"), California Labor Code
16 section 2699 *et seq.*, with 75% thereof earmarked for the California Labor
17 Workforce Development Agency (LWDA) (the "LWDA" Payment"). *Id.* at ¶
18 3(C)(5).
- 19 • Net Settlement Amount: The Net Settlement Amount is the amount that remains and
20 that shall be paid to Settlement Class Members, after the following amounts are
21 subtracted: (1) the fees and costs of the third party administrator charged with
22 administering the settlement (estimated to be approximately \$14,990.00); (2)
23 \$30,000.00 to be paid to the California LWDA (the "LWDA" Payment") (75% of the
24 \$40,000.00 PAGA Payment); (3) any service award approved by the Court for the
25 Class Representative; and (4) any attorneys' fees and costs approved by the Court.
26 *Id.* at ¶ 3(C).
- 27 • Direct Payments to Settlement Class Members / No Claim Forms: Settlement Class
28 Members who do not opt out of the Settlement will not need to submit claims to
receive their pro-rata settlement payment. *Id.* at ¶¶ 4 and 9. Rather, Individual
Settlement Payments (i.e., settlement checks) will be automatically sent to all class
members for whom a valid address can be located either through Defendant's
records, and/or by the Settlement Administrator through the National Change of
Address database (NCOA). *Id.* at ¶ 10(B);
- Distribution Formula: Each Settlement Class Member's individual share of the
Settlement will be proportional to the number of weeks the class member worked for
Defendant during the applicable time period, in comparison to the aggregate number
of weeks all Settlement Class Members combined worked for Defendant during the
same period. Settlement Agreement, at ¶ 4(B). The formula is set forth in the
Settlement Agreement as well as the proposed Notice of Class Action Settlement.
Settlement Agreement, at ¶ 4(B) and Exhibit 7 to Marshall Decl.
- Tax Allocation: The Settlement provides that settlement awards to Class Members
will be allocated as follows: Twenty Percent (20%) shall be treated as unpaid wages
and Eighty Percent (80%) shall be treated as statutory penalties, civil penalties, and
interest. Settlement Agreement, at ¶ 4(D).
- Notice of Class Action Settlement: The Notice of Class Action Settlement ("Notice")
set forth in plain terms, a statement of the case, the terms of the Settlement, the
amount of attorneys' fees, costs, and the service award being sought, an explanation

of how the settlement allocations are calculated, among other pertinent information. *See*, Exhibit A to Dancy Decl. The Notice also was tailored to provide each Class Member with the number of work weeks credited to that Class Member and an estimate of the amount of money that the Class Member will receive if all Class Members participate in the Settlement. *Id.* The Notice was also tailored to provide the 45-calendar day Response Deadline for the originally mailed Notice, and any re-mailed Notice. Class members were notified by first class U.S. mail of the settlement. Apex, the parties' selected Settlement Administrator, undertook its best efforts to ensure that the Notice was provided to the current addresses of class members, including conducting a national change of address search and re-mailing the Notice to updated addresses. Settlement Agreement at ¶ 9(B and F). Dancy Decl. at ¶¶ 4-11.

- Right to Challenge Defendant's Workweek Records: Settlement Class Members had the opportunity, should they disagree with Defendant's records regarding the dates of employment stated on their Notice, to provide documentation and/or an explanation to show contrary employment dates. Settlement Agreement at ¶ 9(E). If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted and the Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment shall be binding upon the Settlement Class Member and the Parties. *Id.*
- Right to Object: The Notice shall stated that Settlement Class Members who wish to object to the Settlement must mail to the Settlement Administrator a written statement of objection by the Response Deadline. Settlement Agreement, at ¶ 9(D). Settlement Class Members who failed to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. *Id.*
- Right to Opt Out: The Notice stated that Class Members who wish to exclude themselves from the Settlement must submit a written Request for Exclusion to the Settlement Administrator by the Response Deadline. Settlement Agreement, at ¶ 9(C). Any Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. *Id.*

An objective assessment of the Settlement affirms that the relief negotiated on the Settlement Class's behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm's length with guidance from Louis M. Marlin, Esq., an experienced and well-respected employment-law class action mediator. The Settlement confers substantial benefits to approximately 1,584 low wage participating Class Members. This compensation—averaging approximately \$448.25 per Class Member—is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification

1 being denied or of Defendant prevailing at trial, or of Plaintiff prevailing at trial but losing on
2 appeal. Additionally, Defendant here credibly represented that it has significant financial strains
3 and limited financial resources, which could greatly limit recovery by the Class. Second, due to
4 Defendant being a religious institution involved in religious instruction, Plaintiff's employment-
5 related claims could be subject to a ministerial exception bar, which could be a complete
6 defense to all claims raised.

7 Given the Settlement's favorable terms, the Court's previous findings concerning
8 the Settlement's fairness and reasonableness, and the complete absence of objection to the
9 Settlement, Plaintiff respectfully requests that the Court: (1) grant this Motion for Final
10 Approval of the Class Action and PAGA Settlement; (2) grant final approval of the
11 settlement administration costs/expenses; (3) enter judgment pursuant to the Settlement
12 Agreement; and, (4) retain jurisdiction to enforce the Settlement.

13 **FACTS AND PROCEDURE**

14 **A. Summary of the Case and Settlement**

15 Defendant is a religious institution representing the Catholic Church and its belief
16 system and providing religious education via the educational ministry of the Diocese of San
17 Bernardino. Defendant has dozens of schools and parishes throughout the Diocese of San
18 Bernardino Catholic school district. Plaintiff Maria Bahna worked as a Preschool Director at St.
19 Margaret Mary School, a school owned and operated by Defendant, from on or about
20 September, 1997 through on or about September 1, 2023.

21 On or about July, 2022, Plaintiff Maria Bahna contacted counsel to ask for legal advice
22 regarding her wages, hours and working conditions while working for Defendant.² After
23 conducting an initial investigation, on October 31, 2022, Plaintiff submitted a letter to the Labor
24 and Workforce Development Agency (LWDA) providing notice of the law enforcement action
25 for civil penalties under Private Attorneys' General Act of 2004, California Labor Code §§ 2698
26
27

28 ² Declaration of Maria Bahna In Support of Motion for Incentive Award ("Bahna Decl.") at ¶ 5.

1 *et seq.* (PAGA).³ Plaintiff filed her Complaint on January 25, 2023.⁴ Plaintiff then filed First
2 Amended Class Action Complaint on November 29, 2023 (the “Operative Complaint”).⁵ The
3 Operative Complaint alleges that Plaintiff, along with the other members of the putative Class,
4 and other aggrieved employees were subject to Defendant’s illegal conduct including: (1)
5 Failure to Pay Overtime Compensation and Liquidated Damages, (2) Failure to Provide Meal
6 Periods, (3) Failure to Provide Rest Periods, (4) Failure to Provide Accurate Wage Statements
7 and Maintain Accurate Payroll Records (5) Failure to Reimburse Business Expenses, (6)
8 Violation of Labor Code Section 558, (7) Violations of California *Business & Professions Code*
9 § 17200, *et seq.*, and (8) PAGA claims for the preceding Labor Code violations.⁶

10 Shortly after the filing of the Operative Complaint, the parties met and conferred
11 regarding the possibility of exploring an early resolution. However, over the ensuing eighteen
12 months, the parties litigated this matter and participated in substantial formal and informal
13 discovery efforts.⁷ On February 8, 2024, Defendant filed an Answer to Plaintiff’s First
14 Amended Class Action Complaint asserting a general denial and twenty-five affirmative
15 defenses.

16 A mediation was ultimately scheduled for August 12, 2025, with mediator, Louis M.
17 Marlin Esq., an experienced and well-regarded mediator in this area of law.⁸ Further informal
18 discovery followed the scheduling of the mediation, and the mediation itself.⁹ Defendant
19 provided a list of employees to allow for calculating work weeks and pay period data, a
20 sampling of time records, and aggregate dates of employment for all members of the Class and
21 aggrieved employees.¹⁰ Prior to and after the mediation, Defendant provided confirmatory
22 discovery in the form of time and payroll records for 15% of the class members and aggrieved
23

24 _____
25 ³ Declaration of Calvin A. Marshall In Support of Motion for Final Approval (“Marshall Decl.”) at ¶ 5.

26 ⁴ Marshall Decl. at ¶ 6.

27 ⁵ *Id.*

28 ⁶ *Id.*

⁷ Marshall Decl. at ¶¶ 9-11

⁸ Marshall Decl. at ¶ 17.

⁹ Marshall Decl. at ¶¶ 10, 17.

¹⁰ *Id.*

employees.¹¹ Defendant also provided a sufficient declaration supporting limitations on insurance coverage and funds available to address liability in this matter.¹² Counsel examined the evidence as well as evaluated the legal claims and defenses, drawing upon their experience in previous cases, to prepare a liability analysis tailored to the particular facts at issue here.¹³ Counsel vetted the claims through rigorous legal analysis, both on the class certification and merits issues.¹⁴

On August 12, 2025, the parties engaged in a full-day mediation before Mediator Louis Marlin.¹⁵ The mediator, explored and challenged the parties and counsel on many issues.¹⁶ On that day, the Parties reached a tentative settlement on all class and PAGA claims in this matter.¹⁷ Over the months that followed, the parties continued to engage in the discovery discussed *infra*, and negotiated the remaining details of the settlement, and finalized a long-form Settlement Agreement.¹⁸

B. Key Terms of the Proposed Settlement

Under the Settlement Agreement, Defendant will pay \$1,200,000.00, plus all applicable employer payroll taxes, to resolve this litigation (“Gross Settlement Amount”). Marshall Decl., Exh. 1, Settlement Agreement at ¶ 3. This entire amount will be disbursed pursuant to the terms of the Settlement Agreement, and none of Settlement Sum will revert to Defendant. Exh. 1 to Marshall Decl., Settlement Agreement at ¶ 3(C).

The key terms of the Settlement Agreement include:

- Gross Settlement Amount: The Gross Settlement Amount is \$1,200,000.00 [\$1,209,720.26 after application of the escalator clause] for approximately 1,584 Class Members. It is the total sum that Defendant has agreed to pay in exchange for Plaintiff’s and the Settlement Class Members’ releases to fully and finally settle this matter. It does not include the employer’s portion of any payroll taxes owed to the government authorities as a result of the settlement payments, which Defendant will

¹¹ *Id.*

¹² *Id.*

¹³ Marshall Decl. at ¶¶ 11, 17.

¹⁴ Marshall Decl. at ¶ 17.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

1 pay in addition to the Gross Settlement Amount. Settlement Agreement, at ¶ 3;
2 Dancy Decl. ¶ 16.

- 3 • Escalator Clause: If the total number of work weeks in the Class periods increases by
4 more than 10% of 229,000, then the Gross Settlement Amount will be increased
5 proportionately. For example, if the work weeks in the Class Period is 11% higher,
6 the Gross Settlement Amount shall be increased by 1%. Settlement Agreement, at ¶
7 3(D).
- 8 • No Reversion: All settlement funds will be paid out, and none will revert to
9 Defendant. *Id.* at ¶ 3(C). Any individual Settlement Payment that remains uncashed
10 or undistributed in the settlement fund after the payment of all claims, including any
11 accrued interest thereon, will be transferred to the State Controller's Office in the
12 name of the Settlement Class member under the unclaimed property laws. Settlement
13 Agreement at ¶ 4(E).
- 14 • Released Claims: The Released Claims with respect to the Settlement Class
15 Members include all claims and causes of actions alleged in the operative First
16 Amended Complaint and all claims that could have been pled based on the alleged
17 facts in the operative First Amended Complaint. *Id.* at ¶ 2.
- 18 • Settlement Class: The Settlement Class consists of "[a]ll current and former non-
19 exempt employees, as well as those who were allegedly misclassified as exempt
20 employees or independent contractors, of the DIOCESE OF SAN BERNARDINO
21 EDUCATION AND WELFARE CORPORATION from January 25, 2019, through
22 [May 28, 2026]." *Id.* at ¶ 1.
- 23 • PAGA Payment: \$40,000.00 shall be allocated as a settlement of Plaintiff's claims
24 under the Private Attorney General Act of 2004 ("PAGA"), California Labor Code
25 section 2699 *et seq.*, with 75% thereof earmarked for the California Labor
26 Workforce Development Agency (LWDA) (the "LWDA" Payment"). *Id.* at ¶
27 3(C)(5).
- 28 • Net Settlement Amount: The Net Settlement Amount is the amount that remains and
that shall be paid to Settlement Class Members, after the following amounts are
subtracted: (1) the fees and costs of the third party administrator charged with
administering the settlement (estimated to be approximately \$14,990.00); (2)
\$30,000.00 to be paid to the California LWDA (the "LWDA" Payment") (75% of the
\$40,000.00 PAGA Payment); (3) any service award approved by the Court for the
Class Representative; and (4) any attorneys' fees and costs approved by the Court.
Id. at ¶ 3(C).
- Direct Payments to Settlement Class Members / No Claim Forms: Settlement Class
Members who do not opt out of the Settlement will not need to submit claims to
receive their pro-rata settlement payment. *Id.* at ¶¶ 4 and 9. Rather, Individual
Settlement Payments (i.e., settlement checks) will be automatically sent to all class
members for whom a valid address can be located either through Defendant's
records, and/or by the Settlement Administrator through the National Change of
Address database (NCOA). *Id.* at ¶ 10(B);
- Distribution Formula: Each Settlement Class Member's individual share of the
Settlement will be proportional to the number of weeks the class member worked for
Defendant during the applicable time period, in comparison to the aggregate number
of weeks all Settlement Class Members combined worked for Defendant during the
same period. Settlement Agreement, at ¶ 4(B). The formula is set forth in the

Settlement Agreement as well as the proposed Notice of Class Action Settlement. Settlement Agreement, at ¶ 4(B) and Exhibit 7 to Marshall Decl.

- Tax Allocation: The Settlement provides that settlement awards to Class Members will be allocated as follows: Twenty Percent (20%) shall be treated as unpaid wages and Eighty Percent (80%) shall be treated as statutory penalties, civil penalties, and interest. Settlement Agreement, at ¶ 4(D).
- Notice of Class Action Settlement: The Notice of Class Action Settlement (“Notice”) set forth in plain terms, a statement of the case, the terms of the Settlement, the amount of attorneys’ fees, costs, and the service award being sought, an explanation of how the settlement allocations are calculated, among other pertinent information. *See*, Exhibit A to Dancy Decl. The Notice also was tailored to provide each Class Member with the number of work weeks credited to that Class Member and an estimate of the amount of money that the Class Member will receive if all Class Members participate in the Settlement. *Id.* The Notice was also tailored to provide the 45 calendar day Response Deadline for the originally mailed Notice, and any re-mailed Notice. Class members were notified by first class U.S. mail of the settlement. Apex, the parties’ selected Settlement Administrator, undertook its best efforts to ensure that the Notice was provided to the current addresses of class members, including conducting a national change of address search and re-mailing the Notice to updated addresses. Settlement Agreement at ¶ 9(B and F). Dancy Decl. at ¶¶ 4-11.
- Right to Challenge Defendant’s Workweek Records: Settlement Class Members had the opportunity, should they disagree with Defendant’s records regarding the dates of employment stated on their Notice, to provide documentation and/or an explanation to show contrary employment dates. Settlement Agreement at ¶ 9(E). If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted and the Settlement Administrator’s determination of the eligibility for and amount of any Individual Settlement Payment shall be binding upon the Settlement Class Member and the Parties. *Id.*
- Right to Object: The Notice shall stated that Settlement Class Members who wish to object to the Settlement must mail to the Settlement Administrator a written statement of objection by the Response Deadline. Settlement Agreement, at ¶ 9(D). Settlement Class Members who failed to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. *Id.*
- Right to Opt Out: The Notice stated that Class Members who wish to exclude themselves from the Settlement must submit a written Request for Exclusion to the Settlement Administrator by the Response Deadline. Settlement Agreement, at ¶ 9(C). Any Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. *Id.*

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1 **C. The notice and settlement administration process were completed pursuant to**
2 **the Court's order**

3 As authorized by the Court's May 28, 2026, Order Preliminarily Approving the
4 Settlement Agreement, the Parties engaged Apex Class Action, LLC ("Apex") to provide
5 settlement administration services.¹⁹ Apex's duties have, and if the Court enters the final
6 approval order, will include: (1) calculating individual settlement award amounts; (2) processing
7 and mailing settlement award checks; (3) handling tax withholdings as required by the
8 Settlement and applicable law; (4) preparing, issuing, and filing tax returns and other applicable
9 tax forms; (5) managing the distribution of any unclaimed funds pursuant to the terms of the
10 Settlement; and (6) undertaking additional tasks as ordered by the Court for Apex to perform.²⁰

11 On June 3, 2026, Apex received the Notice Packet and Settlement Agreement prepared
12 jointly by Plaintiff's Counsel and counsel for Defendant and approved by the Court.²¹ The Class
13 Notice summarized the Settlement's principal terms, provided Class Members with estimates of
14 how much they would be paid if the Settlement received final approval, and advised Class
15 Members about how to opt out of the Settlement and how to object.²²

16 Separately, between June 19, 2026 through June 22, 2026, counsel for Defendant
17 provided Apex with a mailing list (the "Class List"), which included each Class Member's full
18 name, last known address, Social Security Number, and information necessary to calculate
19 payments.²³ The mailing addresses contained in the Class List were processed and updated
20 using the National Change of Address Database maintained by the U.S. Postal Service.²⁴

21 On August 12, 2026, Apex mailed Class Notices to Class Members via First-Class
22 U.S. mail.²⁵ Per the Settlement Agreement and the May 28, 2026 Order, the Class Members
23 have been given 45 days from the mailing of the original Notice [September 28, 2026], or from
24 the date of any re-mailed Notice [latest being October 12, 2026], to opt out or object to the
25 Settlement.²⁶ As of the filing of this Motion, Plaintiff is pleased to report that only one

26 ¹⁹ Dancy Decl. ¶ 3.

27 ²⁰ *Id.*

28 ²¹ Dancy Decl. ¶ 4.

²² Dancy Decl. ¶ 8; Exhibit A to Dancy Decl.

²³ Dancy Decl. ¶ 5.

²⁴ Dancy Decl. ¶ 7.

²⁵ Dancy Decl. ¶ 8.

²⁶ Settlement Agreement at ¶ 9(B and F). Dancy Decl. at ¶¶ 4-11; Exh A. to Dancy Decl.

individual, or .06 percent of the Settlement Class opted out, not a single Class Member has disputed their workweek calculation, and not a single Class Member has objected to the Settlement.²⁷

ARGUMENT

I. The court should grant final approval of the proposed Class Action Settlement

A. Courts review class action settlements to ensure that the terms are fair, adequate, and reasonable.

“Public policy generally favors the compromise of complex class action litigation.” [Citations.]” *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118; see also 7-Eleven Owners for Fair Franchising v. Southland Corporation (2000) 85 Cal.App.4th 1135, 1151 [“voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation....” [Citation.]”].)

California Rules of Court, rule 3.769²⁸ requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and (2) a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (Rule 3.769(c)-(g); *Cellphone Termination Fee Cases, supra*, 180 Cal.App.4th at p. 1118.)

“[T]he trial court has broad powers to determine whether a proposed settlement in a class action is fair.” (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.)

Reasonableness and fairness are presumed where, as here: “(1) the settlement is reached through arms-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors is small” (collectively, “Dunk Factors”). (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)²⁹ “Where the settlement terms are fair and

²⁷ Dancy Decl. ¶¶ 11-15.

²⁸ All subsequent references to rules are to the California Rules of Court unless otherwise specified.

²⁹ The presumption of fairness is consistent with California’s public policy goal of favoring settlements. *Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236 [“The law wisely favors settlements.”]; *Cellphone Termination Fee Cases, supra*, 180 Cal.App.4th at p. 1118 [“Public policy generally favors the compromise of complex class action litigation....”]; 7-Eleven Owners for Fair Franchising v. Southland

1 reasonable, the settlement is presumptively valid, subject only to objections that may be
2 raised at a final hearing.” (Conte & Newberg, Newberg on Class Actions (4th ed. 2002) §
3 11.26 (Newberg).

4 By granting preliminary approval, this Court has already determined that the
5 Settlement Agreement is fair and reasonable, subject to objections. With no objections to
6 the Settlement [as pf the filing of this Motion], the Court’s preliminary assessment has been
7 separately endorsed by the Settlement Class. Accordingly, this Court should grant final
8 approval.

9 ***1. Plaintiff’s counsel conducted a thorough investigation of the factual and legal***
10 ***issues and were thus able to objectively assess the Settlement’s reasonableness.***

11 As set forth in greater detail above, based on their analysis of documents and class
12 data produced by Defendants (including time and pay records and Defendants’ written
13 labor policies and procedures), Plaintiff’s Counsel were able to realistically assess the
14 value of Plaintiff’s claims and intelligently engage defense counsel in settlement
15 discussions that culminated in the proposed settlement now before the Court.³⁰ By engaging
16 in a thorough investigation and evaluation of Plaintiff’s claims, Plaintiff’s Counsel can
17 opine that the Settlement, for the consideration and on the terms set forth in the Settlement
18 Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members
19 in light of all known facts and circumstances, including the risk of significant delay and
20 uncertainty associated with litigation, and various defenses asserted by Defendant.³¹

21 The Settlement confers substantial benefits to the approximately 1,584 participating

22 *Corporation, supra*, 85 Cal.App.4th at p. 1151 [“Voluntary conciliation and settlement are the preferred
23 means of dispute resolution. This is especially true in complex class action litigation.”]; *Skulnick v. Roberts*
24 *Express, Inc.* (1992) 2 Cal.App.4th 884, 891 [“Public policy strongly discourages litigation and encourages
25 settlement. [Citation.] Settlements can produce peace and goodwill in the community while reducing the
26 expense and persistency of litigation.”].) Additionally, in reviewing the fairness of a class action settlement,
27 “Due regard should be given to what is otherwise a private consensual agreement between the parties.”
(*Cellphone Termination Fee Cases, supra*, 180 Cal.App.4th at p. 1117.) “The inquiry ‘must be limited to the
28 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching
by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
and adequate to all concerned.’” (*Id.* at p. 1118.)

³⁰ Marshall Decl. ¶¶ 10-13, 17, 19-26.

³¹ Marshall Decl. ¶ 23.

1 Class Members. This compensation—averaging approximately \$448.25 per Settlement Class
2 Member, and an additional average of \$8.16 to those who worked during the PAGA period, will
3 be a welcome windfall for members of the Settlement Class.³²

4 **2. *The Settlement was reached through arm’s length bargaining during which all***
5 ***parties were represented by Experienced counsel***

6 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of
7 a proposed settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.)
8 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
9 evidence to the contrary is offered; thus, there is a presumption that settlement negotiations
10 are conducted in good faith. (*Newberg, supra*, § 11.51.)

11 As explained above, On August 12, 2025, the parties engaged in a full-day mediation
12 before Mediator Louis Marlin.³³ On that day, the Parties reached a tentative settlement on all
13 class and PAGA claims in this matter.³⁴ However, vigorous negotiations and continued
14 discovery continued for months thereafter, with the parties even fully briefing Motions to
15 Compel Further Discovery during this time. The Settlement Agreement was not fully executed
16 until January 16, 2026.³⁵

17 Mr. Marlin helped manage the Parties’ expectations and provided a useful, neutral
18 analysis of the issues and risks to both sides. (See *In re Bluetooth Headset Products*
19 *Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 948 [the presence of a neutral mediator is
20 a factor weighing in favor of finding of non-collusiveness]; *In re Apple Computer, Inc.*
21 *Derivative Litigation* (N.D.Cal. Nov. 5, 2008, No. C 06-4128 JF (HRL)) 2008 U.S. Dist.
22 LEXIS 108195 [mediator’s participation weighs considerably against any inference of a
23 collusive settlement]; *D’Amato v. Deutsche Bank* (2d Cir. 2001) 236 F.3d 78, 85
24 “[A]mediator’s involvement in pre-certification settlement negotiations helps to ensure
25 that the proceedings were free of collusion and undue pressure.”]; *Villegas v. J.P. Morgan*

26 _____
27 ³² Dancy Decl. ¶¶ 17-20; Marshall Decl. ¶ 19.

28 ³³ Marshall Decl. ¶ 16-17.

³⁴ *Id.*

³⁵ *Id.*

1 *Chase & Co.* (N.D.Cal. Nov. 21, 2012, No. 09–00261) 2012 WL 5878390 at *6
2 [participation in mediation “tends to support the conclusion that the settlement process
3 was not collusive”]; accord *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon,*
4 *Inc.* (E.D.Cal. 2014) 303 F.R.D. 337, 350.) At all times, the Parties’ negotiations were
5 adversarial and non-collusive.³⁶

6 The Parties were represented by experienced class action counsel throughout the
7 litigation and negotiations resulting in this Settlement. Plaintiff is represented by The
8 Ozzello Practice, PC and The Law Offices of David R. Greifinger. Plaintiff’s Counsel are
9 seasoned class action attorneys who regularly litigate wage and hour claims through
10 certification and on the merits and have considerable experience settling wage and hour
11 class actions.³⁷ Defendants are represented by Lathrop GPM, a respected and experienced
12 defense firm.

13 **A. The consideration provided for the class claims is fair and reasonable in light of**
14 **Defendants’ potential exposure and the risks of continued litigation**

15 In seeking approval, a settling party must provide sufficient information to “enable
16 the court to make an independent assessment of the adequacy of the settlement terms.”
17 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 131-132 (*Kullar*).)
18 However, “It is well-settled law that a cash settlement amounting to only a fraction of the
19 potential recovery will not per se render the settlement inadequate or unfair.” (*Officers for*
20 *Justice v. Civil Service Commission of City & County of San Francisco* (9th Cir. 1982) 688
21 F.2d 615, 628.) “The proposed settlement is not to be judged against a hypothetical or
22 speculative measure of what might have been achieved by the negotiators.” (*Id.* at p. 625.)
23 “Estimates of a fair settlement figure are tempered by factors such as the risk of losing at
24 trial, the expense of litigating the case, and the expected delay in recovery (often measured
25 in years).” (*In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act*
26 *(FACTA) Litigation* (C.D.Cal. 2014) 295 F.R.D. 438, 453.) In other words, in valuing the

27 ³⁶ Marshall Decl. ¶ 17.

28 ³⁷ Marshall Decl. ¶¶ 3-4.

1 claims within a realistic *range* of outcomes, the settling plaintiff should discount the value
2 of the settled claims for risks such as changes in the law, the probability of success, and
3 other factors.³⁸

4 First, Defendant’s significant financial strains, limited financial resources, and limited
5 available insurance could greatly limit recovery by the Class.³⁹ Assuming Plaintiff could defeat
6 Defendant’s ministerial exemption and arbitration defenses, denial of class certification remains
7 a risk.⁴⁰ If Plaintiff’s meal and rest period or overtime claims were not certified, all or many of
8 those eligible to recover under this settlement would have lost significant compensation, and
9 may have been left with nothing at all.⁴¹ Plaintiff also faced the risk, post-certification, that she
10 would not be able to prove class-wide liability.⁴² Further, assuming Plaintiff would prevail at
11 summary judgment or trial on the issue of class liability, there still would be uncertainty in
12 terms of the damages that would be proved and collected.⁴³ As discussed further below,
13 Defendant strongly disputed the exposure figures Plaintiff presented, and the parties had
14 considerable disagreement about the amount of damages Plaintiff could recover even in a best-
15 case scenario for Plaintiff.⁴⁴

16 Although there is uncertainty in projecting trial-ready damages before significant class
17 certification and post-certification merits discovery has been conducted, the \$1,209,720.26

18 ³⁸ Federal courts also recognize that there is an inherent “range of reasonableness” in determining whether to
19 approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the
20 concomitant risks and costs necessarily inherent in taking any litigation to completion.” (*Newman v. Stein*
21 (2d Cir. 1972) 464 F.2d 689, 693; see also *In re Omnivision Tech., Inc.* (N.D. Cal. 2008) 559 F.Supp.2d
22 1036, 1042; *National Rural Telecommunications Cooperative v. DIRECTV, Inc.* (C.D.Cal. 2004) 221 F.R.D.
23 523, 527 [“It is well-settled law that a proposed settlement may be acceptable even though it amounts to only
24 a fraction of the potential recovery.”]; *In re Global Crossing Sec. and ERISA Litigation* (S.D.N.Y. 2004) 225
25 F.R.D. 436, 460-461 [“settlement amount’s ratio to the maximum potential recovery need not be the sole, or
even dominant, consideration when assessing settlement’s fairness”]; *In re IKON Office Solutions, Inc.*
Securities Litigation (E.D.Pa. 2000) 194 F.R.D. 166, 183-184 [“[T]he fact that a proposed settlement
constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the
settlement; rather the percentage should be considered in light of strength of the claims.”]; *Officers for*
Justice v. Civil Service Commission, supra, 688 F.2d at p. 628 [“It is the complete package, taken as a whole
rather than the individual component parts, that must be examined for overall fairness.”].)

26 ³⁹ Marshall Decl. ¶ 19.

27 ⁴⁰ Marshall Decl. ¶ 20.

28 ⁴¹ Marshall Decl. ¶¶ 21-24.

⁴² Marshall Decl. ¶ 26.

⁴³ *Id.*

⁴⁴ *Id.*

1 recovery still compares favorably with Plaintiff’s estimates of Defendant’s total exposure.
2 Based upon the analysis of Defendant’s records, Class Counsel’s expert estimated of total
3 damages, monetary penalties, interest and other relief that the putative Class would be awarded
4 if successful at trial on all of their claims would be a maximum of approximately
5 \$23,532,061.75.⁴⁵ However, this figure is based on Plaintiff’s assessment of an extreme best-
6 case-scenario.⁴⁶ Moreover, even assuming Plaintiff could overcome Defendant’s defenses, to
7 have obtained such a result at trial, Plaintiff would have had to prove that all putative Class
8 Members were denied a compliant meal and rest on approximately 30% of shifts, did not waive
9 those meal periods, and were not properly compensated for those meal periods—all of which
10 Defendant strongly disputed and would have been an incredible result at trial.⁴⁷

11 There also were risks of not prevailing on some of the underlying causes of action –
12 whether in Court or individually for the Plaintiff in arbitration. Due to Defendant being a
13 religious institution involved in religious instruction, Plaintiff’s employment-related claims
14 could all be subject to a ministerial exception bar, which could be a complete defense to all
15 claims raised. Defendant has argued that the ministerial exception is a bar to claims if 1) the
16 defendant is a religious institution and 2) the employee's position falls within the exception. *See*
17 *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 751. (2020). Here, Defendant is
18 clearly a religious institution. Accordingly, the only question will be which of the 1,524 putative
19 Class Members fall within the “minister” exception. Importantly, however, this exception is not
20 limited to only ministers. Defendant argues that the Supreme Court has repeatedly found that
21 employees with a role conveying the Church's message and carrying its missions, including
22 teachers, may fall within the exception. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v.*
23 *E.E.O.C.*, 565 U.S. 171, 192, (2012) (finding the ministerial exception applied to a teacher in a
24 parochial school). Defendant further argues that, in *Our Lady of Guadalupe School*, the Court
25 similarly found that two teachers were ministers because “they both performed vital religious

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27 ⁴⁵ Marshall Decl. ¶ 12.

28 ⁴⁶ Marshall Decl. ¶ 12, 26.

⁴⁷ Marshall Decl. ¶ 26.

1 duties” including “educating and forming students in the Catholic faith. *Our Lady of Guadalupe*
2 *Sch. v. Morrissey-Berru*, 591 U.S. 732, 756 (2020). Thus, it is possible that a significant portion
3 of the putative Class, if not the entire putative Class, would fall within the “minister”
4 requirement and be precluded from raising their employment claims by this exception.
5 Moreover, Defendant argues that the Ninth Circuit has upheld the broad application of this
6 ministerial exception and has expressly stated that it applies to all “tangible employment
7 actions.” See *Headley v. Church of Scientology Int’l*, 2010 WL 3157064, at *5 (C.D. Cal. Aug. 5,
8 2010), *aff’d*, 687 F.3d 1173 (9th Cir. 2012) (“Because the ministerial exception is
9 constitutionally compelled, it applies as a matter of law across statutes, both state and federal,
10 that would interfere with the church-minister relationship’ The exception ‘encompasses all
11 tangible employment actions and disallows lawsuits for damages based on lost or reduced pay.’
12 ”) Accordingly, achieving certification on any of the employment-related claims posed
13 substantial risk, justifying a significant compromise on all claims.⁴⁸

14 With respect to meal periods, Defendant raised multiple potential defenses against this
15 claim.⁴⁹ For instance, Defendant argued its written policy is fully compliant and that it always
16 provided Plaintiff and the putative Class Members with the opportunity to take their meal breaks
17 and thus met the requirements imposed by California law.⁵⁰ Per Defendant, if an employee did
18 not take a meal, if a meal period was taken late in a shift, or if an employee clocked back in after
19 less than 30 minutes, it was in violation of company policy and a multitude of individual
20 inquiries would be necessary to determine if the potential violation occurred due to an
21 employee’s personal choice or for some other reason.⁵¹ Thus, achieving certification of the meal
22 period claim posed substantial risk, justifying a significant compromise on the meal period
23 claim.⁵² Of additional important note is Plaintiff’s damages estimate assumes no valid meal
24 period waivers, when Defendant argued that meal period waivers existed for putative Class

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26 ⁴⁸ Marshall Decl. ¶ 20.

27 ⁴⁹ Marshall Decl. ¶ 21.

28 ⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

Members.⁵³

Defendant raised similar arguments to Plaintiff's rest period claim and further contended that, since it is not required to maintain a record of rest periods, any evidence of a failure to authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal, rendering class certification inappropriate and a trial on this issue completely unmanageable.⁵⁴ In light of Defendant's defenses, it is entirely possible a jury or the Court could decline to award any amounts for missed or non-compliant rest periods, which warranted a substantial compromise on the rest period claim.⁵⁵

With respect to claims for overtime compensation and expense reimbursement, Defendants argue that these claims would require substantial and individualized analysis of punch sheets, time records, wage statements, and receipts for each of the 1,524 employees due to the fact-intensive and fact-specific nature of each of these claims.⁵⁶ As such, the expense of such analysis could easily outweigh the potential recovery for such violations.⁵⁷ Accordingly, substantial risk also existed as to these claims, justifying a significant compromise on these claims as well.⁵⁸

There were also substantial risks of not prevailing on the wage statement claims which were, by in large, derivative of the overtime and meal and rest period claims.⁵⁹ Defendant also argued that Plaintiff could not succeed on her Labor Code section 226 claim unless they demonstrated that the failure to issue lawful wage statements was "knowing and intentional."⁶⁰ Defendant argued that a "knowing and intentional" violation cannot be found where the employer presents a "good faith dispute" that it complied with its wage statement obligations.⁶¹ *See Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1337. In *Maldonado*, the

⁵³ *Id.*

⁵⁴ Marshall Decl. ¶ 22.

⁵⁵ *Id.*

⁵⁶ Marshall Decl. ¶ 23.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Marshall Decl. ¶ 24.

⁶⁰ *Id.*

⁶¹ *Id.*

1 court also held that “only the absence of the hours worked will give rise to an inference of
2 injury,” and “the absence of accurate wages earned will be remedied by the violated wage and
3 hour law itself.” The *Maldonado* court denied the employees’ claims for penalties on the
4 inaccurate wage statements since this would have constituted a double recovery. *Id*

5 Plaintiff’s calculation of Defendant’s outside exposure for PAGA penalties was
6 substantial.⁶² Conceivably, Plaintiff could have recovered as much as \$18,398,768.55 in PAGA
7 penalties at trial.⁶³ However, it is highly unlikely that Plaintiff would have recovered PAGA
8 penalties on this scale.⁶⁴ To begin, Court has almost complete discretion to assess PAGA
9 penalties.⁶⁵ Additionally, to have triggered PAGA penalties, Plaintiff would have had to prevail
10 on all of their underlying claims.⁶⁶ Under such circumstances, the Court may well have
11 determined that awarding full PAGA penalties would have been “unjust, arbitrary and
12 oppressive, or confiscatory” under Cal. Lab. Code § 2699(e)(2), and reduced them
13 accordingly.⁶⁷ Plaintiff also faced the risk that the Court would follow authority precluding
14 Plaintiff from “stacking” penalties for the same or similar underlying violations. *See, Smith v.*
15 *Lux Retail N Am., Inc.* (N.D. Cal. June 13, 2013) 2013 WL 2932243, at *3 (in which, on a
16 motion for remand, the court questioned the plausibility of “pil[ing] one penalty on another for a
17 single substantive wrong.”).

18 For all these reasons, the final settlement amount compares very favorably with
19 Plaintiff’s estimates of Defendant’s exposure.⁶⁸ In reaching the settlement, Plaintiff weighed the
20 value of the prospective relief and actual payments to the Settlement Class Members against the
21 risks of Defendant’s financial condition and defenses, achieving and maintaining class status
22 through the damages phase, proving liability and damages, and the consequences of further
23 delay to putative Class Members.⁶⁹ Moreover, even if Plaintiff prevailed on all the claims and

24 ⁶² Marshall Decl. ¶ 25.

25 ⁶³ *Id.*

26 ⁶⁴ *Id.*

27 ⁶⁵ *Id.*

28 ⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Marshall Decl. ¶ 26.

⁶⁹ Marshall Decl. ¶ 19.

1 damages theories through verdict, one or more appeals would have been likely given the nature
2 of this case and the defenses presented.⁷⁰ Issues collecting based on any final judgment was also
3 a distinct risk.⁷¹ Given these risks, costs and delays associated with litigating the case through a
4 trial and appeals, the total settlement amount of \$1,209,720.26 provides very strong recovery for
5 the Settlement Class here.⁷²

6 Courts routinely approve settlements that provide a similar discounted range of the
7 maximum potential recovery. (See, e.g., *In re Cendant Corporation Litigation* (3d Cir. 2001)
8 264 F.3d 201, 241 [range of recoveries from 1.6 percent to 14 percent of maximum for
9 securities class action settlements]; *In Re Armored Car Antitrust Litigation* (N.D.Ga. 1979) 472
10 F.Supp. 1357, 1373 [citing approval of settlements ranging from one percent to eight percent of
11 the estimated potential recovery]; *Balderas v. Massage Envy Franchising, LLP* (N.D.Cal. July
12 21, 2014) 2014 WL 3610945 at *5 [settlement which amounted to eight percent of maximum
13 potential recovery “[fell] within the range of possible initial approval based on the strength of
14 plaintiff’s case and the risk and expense of continued litigation”]; *In re Omnivision Technologies,*
15 *Inc.* (N.D.Cal. 2008) 559 F.Supp.2d 1036, 1042 [approving settlement of over six percent of
16 maximum potential recovery in shareholder class action litigation].)⁷³

17 ///

19 ⁷⁰ Marshall Decl. ¶ 19.

20 ⁷¹ *Id.*

21 ⁷² *Id.*

22 ⁷³ See also *In re Uber FCRA Litigation* (N.D.Cal. June 29, 2017, No. 14-cv-05200-EMC) 2017 U.S. Dist.
LEXIS 101552 at *23- 24 [granting preliminary approval to class action settlement where gross settlement
fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5 percent or less of total
possible verdict]; *Viceral v. Mistras Group, Inc.* (N.D.Cal. Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 U.S.
Dist. LEXIS 140759 at *21 [granting preliminary approval to class action settlement representing “8.1% of
the full verdict value” with net settlement amount representing approximately 5.3 percent of full verdict
value]; *Stovall-Gusman v. W.W. Granger, Inc.* (N.D.Cal. June 17, 2015, No. 13-cv-02540-HSG) 2015 WL
3776765 at *4 [granting final approval to settlement with net recovery to Plaintiffs valued at 7.3 percent of
potential maximum recovery]; *Cruz v. Sky Chefs, Inc.* (N.D.Cal. Dec. 19, 2014, No. 12-cv-02705-DMR)
2014 WL 7247065 at *5 [granting final approval where gross settlement amount represented 8.6 percent of
the maximum potential recovery from the class claims and estimated amount distributable to class after
accounting for attorneys’ fees and other deductions represented approximately 6.1 percent of maximum
potential recovery]; *In re LDK Solar Securities Litigation* (N.D Cal. July 29, 2010, No. 07-cv-05182-WHA)
2010 WL 3001384 at *2 [granting final approving where proposed settlement amount was about five percent
of the estimated damages before fee and costs—even before any reduction for attorney’s fees and costs]).

B. The Settlement Class has responded positively to the Settlement.

In evaluating the fairness of a Settlement, “The absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.” (*National Rural Telecommunications Cooperative v. DIRECTV, Inc.* (C.D.Cal. 2004) 221 F.R.D. 523, 529.) Here, as of the filing of this Motion, only one individual, or .006 percent, opted out of the Settlement Class; no class member has disputed their workweek calculation; no Class Members have objected to the Settlement.⁷⁴

The Class’s response is “overwhelmingly positive,” supporting approval of the Settlement. (See *7-Eleven Owners for Fair Franchising v. Southland Corporation, supra*, 85 Cal.App.4th at pp. 1152-1153 [response to proposed settlement overwhelmingly positive where 80 out of 5,454 class members elected to opt out and nine class members objected]; *Chun-Hoon v. McKee Foods Corporation* (N.D.Cal. 2010) 716 F.Supp.2d 848, 852 [zero objections and 16 opt-outs (4.86 percent of the class) from 329 class members “strongly” support settlement]; *Garner v. State Farm Mutual Automobile Insurance Co.* (N.D.Cal. Apr. 22, 2010, No. CV 08 1365 CW EMC) 2010 WL 1687832, at *15 (opt-outs of 101 out of 24,000 settlement class members [about 0.4 percent] indicated fairness of settlement]). In other words, “[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness.” (*Hanlon v. Chrysler Corporation* (9th Cir. 1998) 150 F.3d 1011, 1027.)

The average settlement payment will be approximately \$448.25 to each participating Class Member, with the highest settlement payment being approximately \$1,071.28.⁷⁵ This average net recovery is within the range of other retail wage and hour class action settlements approved by California state and federal courts and in fact exceeds them. (See, e.g., *Sandoval v. Nissho of California, Inc.* (Super. Ct. San Diego, Dec. 3, 2010, No. 37-2009-00091861) [average net recovery of approximately \$145.00]; *Fukuchi v. Pizza Hut* (Super. Ct. L.A. County, Sept. 29, 2006, No. BC302589) [average net recovery of

⁷⁴ Dancy Decl. ¶¶ 11-20.

⁷⁵ Dancy Decl. 18.

1 approximately \$120.00]; *Contreras v. United Food Group, LLC* (Super. Ct. L.A. County,
2 Sept. 10 2009, No. BC389253) [average net recovery of approximately \$120.00]; *Ressler v.*
3 *Federated Department Stores, Inc.* (Super. Ct. L.A. County, Jan. 2, 2009, Case No.
4 BC335018) [average net recovery of approximately \$90.00]; *Doty v. Costco Wholesale*
5 *Corporation* (C.D.Cal. May 14, 2007, No. CV05-3241 FMC-JWJx) [average net recovery
6 of approximately \$65.00]; *Sorenson v. PetSmart, Inc.* (E.D.Cal. Dec. 17, 2018, No. 2:06-
7 CV-02674-JAM-DAD [average net recovery of approximately \$60.00]; *Lim v. Victoria's*
8 *Secret Stores, Inc.* (Super. Ct. Orange County, Jan. 20, 2006, No. 04CC00213) [average net
9 recovery of approximately \$35.00]; *Gomez v. Amadeus Salon, Inc.* (Super. Ct. L.A. County,
10 July 23, 2010, No. BC392297) [average net recovery of approximately \$20.00]; *Jones v.*
11 *Bath & Body Works, Inc.* (C.D.Cal. July 11, 2016, No. 2:13-cv-05206-FMO-AJW) [average
12 net recovery of approximately \$50.00]; *Palencia v. 99 Cents Only Stores* (Super. Ct.
13 Sacramento County, Nov. 5, 2012, No. 34-2010-00079619) [average net recovery of
14 approximately \$80.00].)

15 **C. The Court should approve the PAGA Settlement**

16 The Settlement Agreement includes a total amount of \$40,000.00 to resolve Plaintiff's
17 PAGA claims, of which 75 percent (\$30,000.00) will be paid to the LWDA and 25 percent
18 (\$10,000.00) will be paid to all persons who are employed or have been employed by Defendant
19 in California as employees at any time during the time period from October 31, 2021, through
20 Preliminary Approval (the "PAGA Period").⁷⁶ This result was reached through good-faith
21 negotiation.

22 Statutory penalties could be calculated according to Labor Code section 2699,
23 subdivision (f)(2). If, at the time of an alleged violation, the person employs one or more
24 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
25 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
26 pay period for each subsequent violation. Using the most generous method of calculation of
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28 ⁷⁶ Exhibit 3 to Marshall Decl. [Settlement Agreement] at ¶¶ (2)(B); 3(C)(5).

1 penalties for the PAGA group, Plaintiff could have recovered as much as \$18,398,768.55 in
2 PAGA penalties at trial.⁷⁷ However, it is highly unlikely that Plaintiff would have recovered
3 PAGA penalties on this scale.⁷⁸ To begin, the Court has almost complete discretion to assess
4 PAGA penalties.⁷⁹ Additionally, to have triggered PAGA penalties, Plaintiff would have had to
5 prevail on all of her underlying claims.⁸⁰ Under such circumstances, the Court may well have
6 determined that awarding full PAGA penalties would have been “unjust, arbitrary and
7 oppressive, or confiscatory” under Cal. Lab. Code § 2699(e)(2), and reduced them
8 accordingly.⁸¹ Plaintiff also faced the risk that the Court would follow authority precluding
9 Plaintiff from “stacking” penalties for the same or similar underlying violations. *Smith v. Lux*
10 *Retail N Am., Inc.* (N.D. Cal. June 13, 2013) 2013 WL 2932243, at *3 (in which, on a motion
11 for remand, the court questioned the plausibility of “pil[ing] one penalty on another for a single
12 substantive wrong.”). For all these reasons, the final settlement amount compares very favorably
13 with Plaintiff’s estimates of Defendant’s exposure.⁸²

14 PAGA gives the Court wide latitude to reduce the amount of civil penalties “based
15 on the facts and circumstances of a particular case” when “to do otherwise would result in
16 an award that is unjust, arbitrary and oppressive, or confiscatory.” (Lab. Code, § 2699,
17 subd. (h).) In reducing PAGA penalties, courts have considered issues including whether
18 the employees suffered actual injury from the violations, whether the defendant was aware
19 of the violations, and the employer’s willingness to fix the violation. (*Carrington v.*
20 *Starbucks Corporation* (2018) 30 Cal.App.5th 504, 529; see also *Cotter v. Lyft, Inc.*
21 (N.D.Cal. 2016) 193 F. Supp. 3d 1030, 1037; *Fleming v. Covidien Inc.* (C.D.Cal. Aug. 12,
22 2011, No. ED CV 10-01487 RGK (OPX)) 2011 WL 7563047 at *4.)

23 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested
24 PAGA penalties in the amount of approximately \$70 million. (*Carrington v. Starbucks*

25 ⁷⁷ Marshall Decl. ¶ 25.

26 ⁷⁸ *Id.*

27 ⁷⁹ *Id.*

28 ⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Marshall Decl. ¶ 25-26.

1 *Corporation, supra*, 30 Cal.App.5th at p. 517.) The trial court instead awarded only
2 \$150,000—**or 0.021 percent of the maximum**—and stated that this reduction was
3 warranted because imposing the maximum penalty would be “unjust, arbitrary, and
4 oppressive” based on Starbucks’s “good faith attempts” to comply with meal period
5 obligations and because the court found the violations were minimal. (*Ibid.*) The Court of
6 Appeal affirmed the lower court’s reduced award of a \$150,000 penalty under PAGA. (*Id.*
7 at p. 529.)

8 Likewise, in *Fleming v. Covidien Inc.* (C.D.Cal. Aug. 12, 2011, No. ED CV 10-
9 01487 RGK (OPX)) 2011 WL 7563047, the court reduced the potential penalties by over 82
10 percent, awarding \$500,000.00 instead of maximum penalties of \$2.8 million. (2011 WL
11 7563047 at *4; see also *Thurman v. Bayshore Transit Management* (2012) 203 Cal.App.4th
12 1112, 1135-1136 [affirming 30 percent reduction under specified PAGA claim where the
13 employer produced evidence that it took its obligations seriously]; *Li v. A Perfect Day*
14 *Franchise, Inc.* (N.D.Cal. June 15, 2012, No. 5:10-CV-01189-LHK) 2012 WL 2236752 at
15 *17 [denying PAGA penalties for violation of Labor Code section 226 as redundant with
16 recovery on a class basis under Labor Code section 226, directly]; *Aguirre v. Genesis*
17 *Logistics* (C.D.Cal. Dec. 30, 2013, No. SACV 12-00687 JVS (ANx)) 2013 WL 10936035 at
18 *2-*3 [reducing penalty for past PAGA violations from \$1.8 million to \$500,000.00, after
19 rejecting numerous other PAGA claims].)

20 Plaintiff here determined an appropriate range of settlement for PAGA penalties as a
21 percentage of the settlement range that was consistent with other hybrid class/PAGA
22 settlements approved by California courts.⁸³ Where PAGA penalties are negotiated in good

23 ⁸³ See, e.g., *Dearaujo v. Regis Corporation* (E.D.Cal. June 29, 2016, No. 2:14-cv-01408-KJM-AC) 2016 WL
24 3549473 at *3 [preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties with
25 \$7,500.00 paid to LWDA]; *Garcia v. Gordon Trucking, Inc.* (E.D.Cal. Oct. 31, 2012, No. 1:10-CV-0324
26 AWI SKO) 2012 WL 5364575 at *7 [approving \$3.7 million settlement containing \$10,000.00 PAGA
27 penalties with \$7,500 paid to LWDA]; *Chu v. Wells Fargo Investments, LLC* (N.D.Cal. Feb. 16, 2011, No. C
28 05-4526 MHP) 2011 WL 672645 at *1 [approving \$6.9 million settlement containing \$10,000.00 PAGA
penalties with \$7,500.00 paid to LWDA]; *Guerrero v. R.R. Donnelley & Sons Co.* (Super. Ct., Riverside
County Super. Ct., July 16, 2013, No. RIC 10005196, Judge Matthew C. Perantoni) [gross settlement fund of
\$1,100,000.00, of which \$3,000.00 (or 0.3 percent) was allocated to the settlement of PAGA penalties];
Parra v. Aero Port Services, Inc. (Super. Ct. L.A. County, April 20, 2015, No. BC483451, Judge Jane

1 faith and “there is no indication that [the] amount was the result of self-interest at the
2 expense of other Class Members,” the amounts are generally considered reasonable.
3 (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. 08-00844) 2009 U.S. Dist.
4 LEXIS 33900 at *24; see, also, *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576,
5 579 [Trial court did not abuse its discretion in approving class action settlement that did not
6 allocate any damages to PAGA claims.])

7 **D. The requested payment to the Settlement Administrator is reasonable and**
8 **should receive final approval**

9 Plaintiff requests final approval of settlement administration costs in the amount of
10 \$14,990.00⁸⁴ Apex is well qualified, has promptly and properly distributed the Class Notice to
11 all Class Members, and has completed its duties in accordance with the settlement terms and the
12 Court’s preliminary approval Order.⁸⁵ Accordingly, the \$14,990.00 payment is fair and
13 reasonable and should be accorded final approval along with the rest of the Settlement terms.

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24 Johnson) [gross settlement fund of approximately \$1,458,900.00, of which \$5,000.00 (or 0.3 percent) was
25 allocated to the settlement of PAGA penalties]; *Thompson v. Smart & Final, Inc.* (Super. Ct. L.A. County,
26 Nov. 18, 2014, No. BC497198, Judge William F. Highberger) [gross settlement fund of \$3,095,000.00, of
27 which approximately \$13,333.00 (or 0.4 percent) was allocated to the settlement of PAGA penalties];
28 *Chavez v. Vallarta Food Enterprises, Inc.* (Super. Ct. L.A. County, Nov. 10, 2014, No. BC490630, Judge
William F. Highberger) [gross settlement fund of \$1,545,900.00, of which \$10,000.00 (or 0.6 percent) was
allocated to the settlement of PAGA penalties]; *Coleman v. Estes Express Lines, Inc.* (Super. Ct. L.A.
County, Oct. 3, 2013, No. BC429042, Judge Kenneth R. Freeman) [gross settlement fund of \$1,535,000.00,
of which \$1,000.00 (or 0.1 percent) was allocated to the settlement of PAGA penalties].)

⁸⁴ Dancy Decl. ¶ 21.

⁸⁵ Dancy Decl. ¶¶ 2-8.

1 **CONCLUSION**

2 The Parties have negotiated a fair and reasonable settlement of the class claims that
3 likely would not have been brought, let alone successfully resolved, but for the effort and
4 resolve of Plaintiff and her counsel. The Class Members' positive response indicates that
5 the Settlement is fair and reasonable. Accordingly, Plaintiff respectfully requests that this
6 Court grant final approval of the Settlement Agreement and enter judgment.

7
8 Dated: September 16, 2026

THE OZZELLO PRACTICE, PC
LAW OFFICES OF DAVID R. GREIFINGER

9
10 By: 
11 MARK A. OZZELLO
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15 *and the putative Class*

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I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within lawsuit; my business address is 26565 Agoura Road, Suite 200, Calabasas, CA 91302.

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